

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KITTY M. SCHULTZ and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Sheridan, Wyo.

*Docket No. 96-1952; Submitted on the Record;
Issued July 2, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish she sustained an injury in the performance of duty on March 21, 1995.

On March 21, 1995 appellant, then a 48-year-old secretary,¹ was walking up a set of deteriorating stairs when she slipped and fell. She filed a claim for abrasions of the right knee and ankle and abrasions and strains of the left shoulder and arm, neck, chest, and lower back. In a January 18, 1996 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that fact of an injury had not been established. In an accompanying memorandum, an Office claims examiner stated that the evidence of record was insufficient to establish that the claimed incident occurred at the time, place and in the manner alleged and that the evidence was insufficient to show that appellant sustained an injury resulting from the alleged work incident.

The Board finds that the alleged incident occurred at the time, place and in the manner alleged.

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.² The employee has the burden

¹ At the time of the employment injury, appellant was serving as president of the local union at 100 percent official time.

² *Merton J. Sills*, 39 ECAB 572 (1988).

of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast doubt upon the validity of the claim. However, her statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.³

In this case, appellant stated that she fell on stairs on March 21, 1995. She submitted a statement of a witness who saw her fall. A March 22, 1995 dispensary note indicated that appellant fell on steps, skinning her right knee and hitting her left arm as she fell. The dispensary note indicated that appellant caught herself with the left arm and had pain in her left shoulder. These statements are consistent and are sufficient to establish that appellant fell at work on March 21, 1994 as she described and sought prompt medical treatment following that incident.

The Board finds, however, that appellant has not met her burden of proof in establishing that she had sustained an injury arising from the March 21, 1995 incident.

A person who claims benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of her claim. Appellant has the burden of establishing by reliable, probative, and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.⁵ As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.⁶ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁷ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁸

The initial dispensary note indicated that appellant "skinned" her right leg in the fall which would indicate that she sustained abrasions in the fall. The dispensary notes contain a diagnosis of abrasions of the right leg at the knee and ankle and trauma to the left shoulder. A March 27, 1995 dispensary note indicated that appellant was complaining of pain in the left upper back with spasms in the left trapezius, rhomboid and deltoid regions. However, these notes are followed by illegible signatures with no indication that the signatures were those of physicians. These notes therefore cannot be considered probative medical evidence.

³ *Carmen Dickerson*, 36 ECAB 409 (1985).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

⁶ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁷ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁸ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

In an April 18, 1995 report, Dr. Christopher Smith, a Board-certified orthopedic surgeon, indicated that he was seeing appellant for pain in her neck and left shoulder. He gave a history of the March 21, 1995 employment injury, noting that appellant caught herself with her arms and had pain in the left shoulder and neck, radiating down to the pectoralis muscle and toward the scapula on the left side. He reported that on examination appellant had some tenderness of the sublux capital regions of both sides and tenderness through the trapezius muscle to the left side and the supraspinatus muscle. He indicated that appellant had some point tenderness to the rotator cuff and the subacromial region on the left shoulder and had a positive impingement sign. He commented that appellant had a full range of motion in both shoulders. The sensory examination revealed a small decreased sensation over the median nerve distribution of the left hand but the Phalen's test and the Tinel's sign were negative. Dr. Smith diagnosed strain of rotator cuff syndrome and cervical strain superimposed on degenerative spondylolysis. However, he did not state that these conditions were caused by the employment injury and did not discuss how the employment injury caused the diagnosed conditions. This report does not provide the rationalized medical evidence necessary to relate appellant's conditions to the March 21, 1995 employment injury. Subsequent reports only discussed appellant's progress and not the cause of her condition. Appellant therefore has not met her burden of proof in relating her shoulder and cervical conditions to the employment injury.

The decision of the Office of Workers' Compensation Programs, dated January 18, 1996, is hereby modified to find that appellant sustained an incident at the time, place and in the manner alleged. The decision is affirmed as modified.

Dated, Washington, D.C.
July 2, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member